

## HOUSE BILL NO. 42

INTRODUCED BY W. STAHL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT COSTS AND ATTORNEY FEES MUST BE AWARDED AGAINST AN AGENCY THAT ADOPTS A RULE THAT IS INVALIDATED BY A COURT JUDGMENT; AMENDING SECTION 2-4-406, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Invalid rule -- costs and attorney fees.** If a rule adopted pursuant to this part is invalidated by court judgment, the court shall award costs and reasonable attorney fees against the agency that adopted the rule.

**Section 2.** Section 2-4-406, MCA, is amended to read:

**"2-4-406. Committee objection to violation of authority for rule -- effect.** (1) If the appropriate administrative rule review committee objects to all or some portion of a proposed or adopted rule because the committee considers it not to have been proposed or adopted in substantial compliance with 2-4-302, 2-4-303, and 2-4-305, the committee shall send a written objection to the agency that promulgated the rule. The objection must contain a concise statement of the committee's reasons for its action.

(2) Within 14 days after the mailing of a committee objection to a rule, the agency promulgating the rule shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection.

(3) If the committee fails to withdraw or substantially modify its objection to a rule, it may vote to send the objection to the secretary of state, who shall, upon receipt of the objection, publish the objection in the register adjacent to any notice of adoption of the rule and in the ARM adjacent to the rule, provided an agency response must also be published if requested by the agency. Costs of publication of the objection and the agency response must be paid by the committee.

(4) If an objection to all or a portion of a rule has been published pursuant to subsection (3), the agency bears the burden, in any action challenging the legality of the rule or portion of a rule objected to by the committee, of proving that the rule or portion of the rule objected to was adopted in substantial compliance with

1 2-4-302, 2-4-303, and 2-4-305. ~~If a rule is invalidated by court judgment because the agency failed to meet its~~  
2 ~~burden of proof imposed by this subsection and the court finds that the rule was adopted in arbitrary and~~  
3 ~~capricious disregard for the purposes of the authorizing statute, the court may award costs and reasonable~~  
4 ~~attorney fees against the agency."~~

5  
6 NEW SECTION. **Section 3. Codification instruction.** [Section 1] is intended to be codified as an  
7 integral part of Title 2, chapter 4, part 3, and the provisions of Title 2, chapter 4, part 3, apply to [section 1].

8  
9 NEW SECTION. **Section 4. Effective date.** [This act] is effective July 1, 2005.

10 - END -